

PT 98-39

Tax Type: **PROPERTY TAX**

Issue: **Charitable Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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<b>RANDOLPH STREET</b>	)	
<b>GALLERY,</b>	)	
<b>APPLICANT</b>	)	<b>Docket Nos: 94-16-1707</b>
	)	<b>95-16-0875</b>
<b>v.</b>	)	
	)	<b>Real Estate Exemptions</b>
	)	<b>for 1994 &amp; 1995 Assessment Years</b>
<b>DEPARTMENT OF REVENUE</b>	)	
<b>STATE OF ILLINOIS</b>	)	<b>P.I.N.: 17-08-205-015-1001</b>
	)	
	)	<b>Alan I. Marcus,</b>
	)	<b>Administrative Law Judge</b>

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Mr. Jeffrey B. Frishman of Winston & Strawn on behalf of the Randolph Street Gallery.

**SYNOPSIS:** These proceedings raise the following issues: (1) does applicant qualify as an "institution of public charity" within the meaning of 35 ILCS 200/15-65;<sup>1</sup> (2) should certain specifically identifiable portions of real estate identified by Cook County Parcel Index Number 17-08-205-015-1001 (hereinafter referred to in its entirety as the "subject parcel," the "subject

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1. In People ex. rel. Bracher v. Salvation Army, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption necessarily depends on the statutory provisions in force during the time for which the exemption is claimed. This applicant seeks exemption from 1994 and 1995 real estate taxes. Therefore, the applicable provisions are those found in the Property Tax Code, 35 ILCS 200/1 *et seq.*

property" or the "Gallery") be exempt from 1994 and 1995 real estate taxes under 35 **ILCS** 200/15-65; (3) if such portions are not so exempt, does applicant qualify as a "school" within the meaning of 35 **ILCS** 200/15-35; (4) if applicant does not so qualify, do those specifically identified portions of the subject parcel otherwise qualify for exemption under 35 **ILCS** 200/15-35; and (5) do the Department's exemption denials violate applicant's equal protection rights ?

The controversies arise as follows:

Randolph Street Gallery (hereinafter "RSG" or the "applicant") filed two separate Real Estate Exemption Complaints with the Cook County Board of (Tax) Appeals (hereinafter the "Board") (Dept. Group. Ex. No. 1, Docs. B, E).<sup>2</sup> After reviewing each complaint, the Board took "no action" on the 1995 exemption complaint but recommended to the Illinois Department of Revenue (hereinafter the "Department") that the 1994 exemption be denied. Dept. Gr. Ex. No. 1, Docs A, D.

The Department subsequently issued two separate certificates, both of which found that the subject property was not in exempt ownership and not in exempt use during the tax years in question. Dept. Group Ex. No. 3, Docs. A, B. Applicant subsequently filed timely requests for hearing as to each of these denials (Dept. Group Ex. No. 4) and thereafter presented evidence at a formal administrative hearing. Following submission of all evidence and a careful review of the record, I recommend that both of the Department's exemption denials be affirmed.

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2. For exact filing dates and other details about the jurisdictional documents, *See*, Dept. Group Ex. No. 1.

**FINDINGS OF FACT:** <sup>3</sup>

A. Preliminary Considerations & Applicant's Organizational Structure

1. The Department's jurisdiction over these matters and its positions therein, namely that the subject property was not in exempt ownership and not in exempt use during the 1994 and 1995 assessment years, are established by the admission into evidence of Dept. Group Ex. Nos. 1, 3.
2. RSG was incorporated under the General Not for Profit Corporation Act of Illinois on May 15, 1979. Applicant Ex. No. 5-A.
3. Applicant's organizational purposes are, per its Articles of Incorporation, as follows: (1) to provide an artist run, not-for-profit space for the display of art that is an alternative to the commercial galleries and museums in other areas of the city of Chicago; (2) to provide cultural and educational services to the Randolph Street/Haymarket area through the presentation of art shows, workshops, lectures, performances and music, presented during both daylight and evening hours, with an emphasis toward easy access to the gallery, shopkeepers, shoppers and tourists that visit the area; and (3) to aid in the development of a Randolph Street Arts Community by providing an organized forum in which artists may show and share their work in an atmosphere conducive to the free exchange of artistic ideas. *Id.*

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3. I have divided the Findings of Fact into the following categories in order to promote greater clarity and reduce any confusion that results from the voluminous evidence submitted herein: Preliminary Considerations & Applicant's Organizational Structure (Findings of Fact 1-9); Applicant's Fiscal Structure (Findings of Fact 10-16); Description of the Subject Premises & Ownership Issues (Findings of Fact 17-23) and Use Issues (Findings of Fact 24-62).

4. Applicant's re-stated by-laws provide, *inter alia*, that: (1) its daily business affairs shall be managed by a Board of Directors (hereinafter the "Board"), which shall consist of thirty directors; (2) the Board may determine from time to time the amount of initiation fee, if any, and annual dues payable to the corporation by members; (2) dues shall be payable in advance on the first day of the calendar month in each year in which a member was first admitted to membership; (3) whenever any member shall be in default in the payment of dues, his/her membership shall thereupon be terminated automatically; (4) the Board may, by 2/3 vote of the directors, suspend or expel members for cause after an appropriate hearing; and (5) the Board also may, by majority vote of those present at any regularly constituted meeting, terminate the membership, or suspend or expel any member who shall be in default in the payment of dues. *Id.*
5. RSG collected membership dues as a fund-raising device. Its adhered to the following membership structure during the years in question: (1) those paying \$200 and above were designated "friends"; (2) "sustaining members" paid no less than \$75; (3) family or dual memberships cost \$45; (4) individual memberships were priced at \$35 and (5) artist, student or senior citizen memberships cost \$25. Applicant Ex. Nos. 5-O, 5-P, 5-Q, 5-R, 5-S.
6. Those who paid membership dues received discounted admissions to RSG events, a free subscription to applicant's newsletter, P-Form, special events with guest artists, discounts on various publication subscriptions and other unspecified benefits. Applicant Ex. Nos. 5-O, 5-P, 5-Q, 5-R, 5-S, 5-U.

7. Applicant amended its by-laws on March 20, 1996. Said amendment provided that:

As to any event sponsored by Randolph Street Gallery for which it is determined that a fee must be charged, consistent with longstanding policy, Randolph Street Gallery will continue to reduce or waive any said fee based upon a participant's ability to pay. In no event shall a person be excluded from participation in a Randolph Street Gallery event due to that a person's inability to pay any such fee. [sic].

Applicant Ex. No. 5-C.

8. Applicant obtained an exemption from federal income tax December of 1979. The Internal Revenue Service granted this exemption pursuant to Section 501(c)(3) of the Internal Revenue Code and based same on its conclusion that applicant qualified as an organization described in Sections 509(a)(1) and 170(b)(1)(A)(vi) thereof. Applicant Ex. No. 5-D.
9. The Department granted applicant an exemption from Use and related Illinois sales taxes on April 1, 1994. The Department based this exemption on its conclusion that applicant "is a non-profit 501(c)(3) organization for the presentation of musical or theatrical works." Applicant Ex. No. 5-E.

B. Applicant's Fiscal Structure

10. Applicant has no capital stock or shareholders. It operates on a fiscal year that begins July 1 of each calendar year and ends the ensuing June 30 thereof.

Applicant Ex. Nos. 5-B, 6-A, 6-B, 6-C.

11. Applicant obtained revenue and support from the following sources during the fiscal year ended June 30, 1994:

SOURCE	AMOUNT	% of TOTAL SUPPORT <sup>4</sup>	% of TOTAL REVENUE	% of TOTAL SUPPORT & REVENUE
<b>SUPPORT</b>				
Government Grants				
Federal	\$141,974	23%	N/A	22%
State and Local	\$ 49,495	8%	N/A	7%
<b>Total Government Grants</b>	<b>\$191,469</b>	<b>31%</b>	N/A	<b>29%</b>
Foundation and Corporate Grants	\$236,092	38%	N/A	36%
Contributions				
Corporate	\$ 11,300	2%	N/A	2%
Individual	\$ 4,590	1%	N/A	1%
<b>Total Contributions</b>	<b>\$ 15,890</b>	<b>3%</b>	N/A	<b>3%</b>
Benefit Events	\$ 6,270	1%	N/A	1%
Donated Services & Materials	\$163,980	27%	N/A	25%
<b>TOTAL SUPPORT</b>	<b>\$613,701</b>	<b>100%</b>	N/A	<b>93%</b>
<b>REVENUES</b>				
Program Admissions	\$16,870	N/A	38.8%	3%
Concessions	\$ 2,801	N/A	6.4%	<1%
Memberships	\$ 3,730	N/A	8.6%	<1%
Publication Sales	\$ 5,944	N/A	13.7%	1%
Interest Income	\$ 4,339	N/A	9.9%	1%
Space Rental & Other	\$ 9,758	N/A	22.5%	1%
<b>Total Revenue</b>	<b>\$43,442</b>	N/A	100.0%	<b>7.0%</b>
<b>TOTAL SUPPORT &amp; REVENUE</b>	<b>\$657,143</b>	N/A		

Applicant Ex. No. 6-A.

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4. All percentages shown herein are approximations derived by dividing the category of income or expense (e.g. federal grants) by the appropriate total. Thus, for example,  $\$141,974/\$613,701 = .2313$  (rounded to 4 places past the decimal) or approximately 23%.

12. Applicant's expenses for the same fiscal year were as follows:

Expense	Gallery Operations	General & Administrative	Fund Raising	Sum	% of Sum Attributable to Gallery Operations Expense	% of Sum Attributable To General & Administrative Expense	% of Sum Attributable to Fund Raising Expense	Sum Or Total As a Percentage of Total Expenses
<b>Gallery Operation</b>								
Salaries	\$86,930	\$38,234	\$20,719	\$145,883	60%	26%	14%	30%
Payroll Taxes	\$ 3,585	\$ 3,230	\$ 344	\$ 7,159	50%	45%	5%	1%
Health Insurance	\$ 1,162	\$ 4,850	\$ 79	\$ 6,091	19%	80%	1%	1%
Professional Services	\$ 0	\$ 7,972	\$ 0	\$ 7,972	0	100%	0	2%
General Service/ Interns	\$20,817	\$14,887	\$ 120	\$35,824	58%	41%	<1%	7%
Rent & Utilities	\$ 9,700	\$ 3,579	\$ 0	\$13,279	73%	27%	0	3%
Phone	\$ 5,124	\$ 907	\$ 302	\$ 6,333	81%	14%	5%	1%
Insurance	\$ 3,221	\$ 707	\$ 0	\$ 3,928	82%	18%	0	8%
Office Supplies	\$3,076	\$ 521	\$ 399	\$3,996	77%	13%	10%	<1%
Repairs & Maintenance	\$ 0	\$ 189	\$ 0	\$ 189	0	100%	0	<1%
Artist Payments	\$43,365	\$ 550	\$ 0	\$43,915	99%	1%	0	9%
Grants to Artists	\$50,000	\$ 0	\$ 0	\$50,000	100%	0	0	10%
Travel	\$23,461	\$2,516	\$ 30	\$26,007	90%	10%	<1%	5%
Freight	\$ 4,746	\$ 16	\$ 78	\$ 4,840	98%	<1%	2%	1%
Materials	\$17,898	\$2,743	\$ 129	\$20,770	86%	13%	<1%	4%
Equipment Rental	\$ 4,984	\$ 706	N/A	\$ 5,690	88%	12%	0	1%
Documentat- ion	\$ 2,673	\$ 169	\$ 252	\$ 3,094	86%	5%	8%	1%
Postage	\$ 9,446	\$1,626	\$1,215	\$12,287	77%	13%	10%	2%
Design/ Production	\$13,197.00	\$1,080	\$ 716	\$14,993	88%	7%	5%	3%
Printing	\$25,956.00	\$1,321	\$ 358	\$27,635	94%	5%	1%	6%
Advertising	\$ 5,151	\$ 541	0	\$ 5,692	90%	10%	0	1%
Concessions	\$ 1,180	\$ 2,599	\$ 405	\$ 4,184	28%	61%	10%	<1%
Interest & Bank Charges	\$ 100	\$ 7,196	0	\$ 7,296	1%	99%	0	1.5%
Dues & Fees	\$ 2,144	\$ 5,251	\$15	\$ 7,410	29%	71%	<1%	1.5%
Depreciation	\$ 4,304	\$8,040	0	\$12,344	35%	65%	0	2.5%
Miscellaneous	0	\$2,125	0	\$ 2,125	0	100%	0	<1%
Real Estate Taxes	\$ 4,026	\$2,559	0	\$ 6,585	61%	39%	0	1%

<b>TOTAL GALLERY OPERATION</b>	<b>\$346,246</b>	N/A	N/A		100%	0	0	<b>71%</b>
<b>TOTAL GENERAL &amp; ADMIN-ISTRATIVE</b>	N/A	<b>\$114,114</b>	N/A		0	100%	0	<b>24%</b>
<b>TOTAL FUND RAISING</b>	N/A	N/A	<b>\$25,161</b>		0	0	100%	<b>5%</b>
<b>TOTAL EXPENSES</b>	N/A	N/A	N/A	<b>\$485,521</b>				

*Id.*

13. RSG obtained revenue and support from the following sources during the fiscal year ended June 30, 1995:

<b>SOURCE</b>	<b>AMOUNT</b>	<b>% of TOTAL SUPPORT</b>	<b>% of TOTAL REVENUE</b>	<b>% of TOTAL SUPPORT &amp; REVENUE</b>
<b>SUPPORT</b>				
Government Grants				
Federal	\$114,265	28%	N/A	24%
State and Local	\$ 54,539	13%	N/A	11%
<b>Total Government Grants</b>	<b>\$168,804</b>	<b>41%</b>	N/A	<b>35%</b>
Foundation and Corporate Grants	\$167,250	41%	N/A	35%
Contributions			N/A	
Corporate	\$ 11,304	3%	N/A	2%
Individual	\$ 4,276	1%	N/A	1%
<b>Total Contributions</b>	<b>\$15,580</b>	<b>4%</b>	N/A	<b>3%</b>
Benefit Events	\$23,066	6%	N/A	5%
Benefit Auction-Art Sales	\$ 5,435	1%	N/A	1%
Donated Services & Materials	\$32,571	<b>7%</b>	N/A	7%
<b>TOTAL SUPPORT</b>	<b>\$412,706</b>	<b>100%</b>	N/A	<b>86%</b>
<b>REVENUES</b>				
Program Admissions	\$ 16,556	N/A	25%	3%
Concessions	\$ 3,723	N/A	6%	1%
Memberships	\$ 4,960	N/A	8%	1%
Publication Sales	\$ 9,620	N/A	15%	2%
Interest Income	\$ 127	N/A	<1%	<1%
Space Rental & Other	\$29,973	N/A	46%	6%
<b>Total Revenue</b>	<b>\$64,959</b>	N/A	100%	<b>14%</b>
<b>TOTAL SUPPORT &amp; REVENUE</b>	<b>\$477,655</b>			

Applicant Ex. No. 6-B

14. Applicant's expenses for the same fiscal year were as follows:



Expense	Gallery Operations	General & Administrative	Fund Raising	Sum	% of Sum Attributable to Gallery Operations Expense	% of Sum Attributable To General & Administrative Expense	% of Sum Attributable to Fund Raising Expense	Sum Or Total As a Percentage of Total Expenses
<b>Gallery Operation</b>								
Salaries	\$106,976	\$34,538	\$31,901	\$173,415	62%	20%	18%	32%
Payroll Taxes	\$5,887	\$4,566	\$ 1,693	\$ 12,146	48%	38%	14%	2%
Health Insurance	\$8,193	\$1,431	\$ 2,702	\$12,326	66%	12%	22%	2%
Professional Services	\$33,221	\$4,901	\$3,283	\$41,405	80%	12%	8%	8%
General Service/ Interns	\$19,863	\$ 198	\$8,910	\$28,971	69%	<1%	31%	5%
Rent & Utilities	\$ 8,157	\$ 4,664	0	\$12,821	64%	36%	0	2%
Phone	\$ 4,758	\$ 852	\$ 284	\$ 5,894	81%	14%	5%	1%
Insurance	\$ 2,788	\$ 384	\$ 0	\$3,172	88%	12%	0	<1%
Office Supplies	\$2,779	\$ 506	\$ 385	\$3,670	76%	14%	10%	<1%
Repairs & Maintenance	\$ 0	\$ 845	\$ 0	\$ 845	0	100%	0	<1%
Artist Payments	\$54,980	\$ 0	\$ 0	\$54,980	100%	0	0	10%
Grants to Artists	\$44,850	\$ 0	\$ 0	\$44,850	100%	0	0	8%
Travel	\$15,222	\$ 530	\$643	\$16,395	93%	3%	4%	3%
Freight	\$ 5,321	\$ 0	\$ 14	\$ 5,335	>99%	0	<1%	<1%
Materials	\$ 9,923	\$ 1,078	\$2,361	\$13,362	74%	8%	18%	2%
Equipment Rental	\$ 3,667	\$ 300	\$ 167	\$ 4,134	89%	7%	4%	<1%
Documentat- ion	\$ 2,629	\$ 39	\$ 372	\$ 3,040	86%	1%	12%	<1%
Postage	\$ 8,616	\$ 2,748	\$2,115	\$13,479	64%	20%	16%	2%
Design/ Production	\$ 9,369	\$ 255	\$ 215	\$ 9,839	95%	3%	2%	2%
Printing	\$20,801	\$ 1,850	\$2,015	\$24,666	84%	8%	8%	5%
Advertising	\$ 5,137	\$ 266	\$ 536	\$ 5,939	86%	4%	9%	1%
Concessions	\$ 395	\$ 3,438	\$ 0	\$ 3,833	10%	90%	0	<1%
Bad Debts	\$ 0	\$ 2,972	\$ 0	\$2,972	0	100%	0	<1%
Interest & Bank Charges	\$ 20	\$ 12,537	\$ 0	\$12,557	<1%	>99%	0	2%
Dues & Fees	\$2,505	\$ 772	\$ 0	\$ 3,277	76%	24%	0	<1%
Depreciation	\$6,853	\$ 12,804	\$ 0	\$19,657	35%	65%	0	4%
Miscellaneous	\$ 62	\$ 193	\$ 0	\$ 255	24%	76%	0	<1%
Real Estate Taxes	\$6,572	\$4,179	\$ 0	\$10,751	61%	39%	0	2%

<b>TOTAL GALLERY OPERATION</b>	<b>\$389,544</b>	N/A	N/A		100%	N/A	N/A	<b>72%</b>
<b>TOTAL GENERAL &amp; ADMIN-ISTRATIVE</b>	N/A	<b>\$96,846</b>	N/A		N/A	100%	N/A	<b>18%</b>
<b>TOTAL FUND RAISING</b>	N/A	N/A	<b>\$57,596</b>		N/A	N/A	100%	<b>10%</b>
<b>TOTAL EXPENSES</b>				<b>\$543,986</b>				

*Id.*

15. Applicant obtained revenue and support from the following sources during the fiscal year ended June 30, 1996:

<b>SOURCE</b>	<b>AMOUNT</b>	<b>% of TOTAL SUPPORT</b>	<b>% of TOTAL REVENUE</b>	<b>% of TOTAL SUPPORT &amp; REVENUE</b>
<b>SUPPORT</b>				
Government Grants	\$115,681	36%	N/A	28%
Foundation & Corporate Grants	\$116,811	36%	N/A	29%
<b>TOTAL GRANTS</b>	<b>\$232,492</b>	<b>72%</b>	N/A	<b>57%</b>
Contributions				
Corporate	\$12,401	4%	N/A	3%
Individual	\$35,468	11%	N/A	9%
<b>Total Contributions</b>	<b>\$47,869</b>	<b>15%</b>	N/A	<b>12%</b>
Benefit Events	\$12,200	4%	N/A	3%
Benefit Auction	\$24,880	8%	N/A	6%
Donated Services & Materials	\$ 5,669	2%	N/A	1%
<b>TOTAL SUPPORT</b>	<b>\$323,110</b>		N/A	<b>79%</b>
<b>REVENUES</b>				
Program Admissions	\$14,103	N/A	17%	3%
Concessions	\$ 2,750	N/A	3%	<1%
Memberships	\$ 4,884	N/A	6%	1%
Publication Sales	\$ 5,078	N/A	6%	1%
Space Rental & Other	\$57,202	N/A	68%	14%
<b>Total Revenue</b>	<b>\$84,017</b>	N/A		<b>21%</b>
<b>TOTAL SUPPORT &amp; REVENUE</b>	<b>\$407,127</b>			

Applicant Ex. No. 6-C.

16. Applicant's expenses for the same fiscal year were as follows:

Expense	Gallery Operations	General & Administrative	Fund Raising	Sum	% of Sum Attributable to Gallery Operations Expense	% of Sum Attributable To General & Administrative Expense	% of Sum Attributable to Fund Raising Expense	Sum Or Total As a Percentage of Total Expenses
<b>Gallery Operation</b>								
Salaries	\$103,139	\$15,500	\$20,002	\$138,641	74%	11%	14%	30%
Payroll Taxes	\$ 6,991	\$ 3,323	\$ 1,150	\$ 11,464	61%	29%	10%	3%
Health Insurance	\$ 7,037	\$ 1,242	\$ 1,455	\$ 9,734	72%	13%	15%	2%
Professional Services	\$ 17,011	\$16,181	\$ 3,150	\$36,342	47%	44%	9%	8%
General Service/ Interns	\$14,034	\$1,767	\$1,046	\$16,847	83%	10%	6%	4%
Rent & Utilities	\$ 8,949	\$4,422	\$ 0	\$13,371	67%	33%	0	3%
Phone	\$ 3,917	\$ 695	\$ 232	\$ 4,844	81%	14%	5%	<1%
Insurance	\$ 2,780	\$ 446	\$ 0	\$ 3,226	86%	14%	0	<1%
Office Supplies	\$2,522	\$ 471	\$ 206	\$3,199	79%	15%	6%	<1%
Repairs & Maintenance	\$ 280	\$1,211	\$ 0	\$1,491	19%	81%	0	<1%
Artist Payments	\$38,205	0	\$3,855	\$42,060	91%	0	9	9%
Grants to Artists	\$ 0	\$ 0	\$ 0	\$ 0	0	0	0	0
Travel	\$ 7,078	\$ 11,102	\$ 354	\$18,534	38%	60%	2%	4%
Freight	\$ 6,562	\$ 0	\$ 332	\$ 6,894	95%	0	5%	2%
Materials	\$13,032	\$ 472	\$ 580	\$14,084	93%	3%	4%	3%
Equipment Rental	\$ 871	\$ 1,197	\$ 553	\$ 2,621	33%	46%	21%	<1%
Documentation	\$ 2,110	\$ 11	\$ 421	\$ 2,542	83%	<1%	17%	<1%
Postage	\$10,237	\$ 962	\$1,402	\$12,601	81%	8%	11%	3%
Design/ Production	\$ 7,474	0	\$1,372	\$ 8,846	84%	0%	16%	2%
Printing	\$17,824	\$1,370	\$1,284	\$20,478	87%	7%	6%	5%
Advertising	\$ 418	\$ 67	\$ 185	\$ 670	62%	10%	28%	<1%
Concessions	\$ 1,512	\$1,168	\$ 122	\$ 2,802	54%	42%	4%	<1%
Bad Debts	\$ 0	\$ 0	\$ 0	\$ 0	0	0	0	0
Interest & Bank Charges	\$ 0	\$14,076	\$ 0	\$14,076	0	100%	0	3%
Dues & Fees	\$ 421	\$ 2,677	\$ 256	\$ 3,354	12%	80%	8%	<1%
Depreciation	\$ 6,850	\$11,838	\$ 0	\$18,688	37%	63%	0%	4%
Miscellaneous	\$ 700	\$ 1,609	\$ 31	\$ 2,340	30%	69%	1%	<1%
Real Estate Taxes	\$27,972	\$12,471	0	\$40,443	69%	31%	0	9%

<b>TOTAL GALLERY OPERATION</b>	<b>\$307,926</b>	N/A	N/A		100%	N/A	N/A	<b>68%</b>
<b>TOTAL GENERAL &amp; ADMIN-ISTRATIVE</b>	N/A	<b>\$104,278</b>	N/A		N/A	100%	N/A	<b>23%</b>
<b>TOTAL FUND RAISING</b>	N/A	N/A	<b>\$37,988</b>		N/A	N/A	100%	<b>8%</b>
<b>TOTAL EXPENSES</b>				<b>\$450,192</b>				

*Id.*

C. Description of the Subject Premises & Ownership Issues

17. The subject property is located at 754-756 N. Milwaukee Avenue, Chicago, IL 60622. Applicant acquired said property via a warranty deed dated October 18, 1993. Dept. Group Ex. No. 1, Doc. A; Applicant Ex. No. 5-U.
18. The subject property is improved with two 3,000 square foot buildings, each of which has a basement. Dept. Group Ex. No. 1, Document A.
19. Applicant occupied approximately 5,000 square feet of the first floor and 1,000 square feet of the basement during the years in question.<sup>5</sup> Most of the second and third floors were occupied by condominium units.<sup>6</sup> Tr. p. 176-177.

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5. These are the only portions of the subject premises for which applicant is currently seeking exemption. Thus, I shall devote most of the remaining Findings of Fact to describing the physical appearance of these portions (hereinafter collectively referred to as the "portion in dispute") and the uses thereof. For additional information about portions *not* currently in dispute, *see* Dept. Group Ex. No. 1; Tr. pp. 176-177; 255-256.

6. Applicant acquired half of the second-floor units during the fiscal year ended June 30, 1994. Applicant Ex. No. 6-A. While the exact date of acquisition is unspecified, applicant concedes that these portions of the building are not currently at issue. Tr. p. 256. However, RSG did derive rental income from these units. Any proceeds therefrom appear in the "space rental and other" category of the appropriate financial statements. *See*, Findings of Fact 13, 15, *supra* at pp. 8, 10.

20. RSG divided most of its portion of the first floor into four distinct areas, which it used for the following purposes:

AREA NUMBER	SQUARE FOOTAGE	BASIC USE
1	1,700	Visual Arts Exhibition
2	1,200	Multipurpose - Classroom, Workshop, Performing Arts & Catchall Space
3	1,000	Individual Artists' Projects
4	400	Resource Room & Reception Area

Tr. pp. 177-179.

21. The resource room contained books, magazines, videotapes and other resources. Most of these materials pertained to various aspects of the arts. Tr. pp. 222-223.
22. Approximately 250 people used the resource room during each of the 1994 and 1995 assessment years. These users included RSG employees and volunteers as well as general visitors and those who taught and participated in applicant's instructional programs.<sup>7</sup>
23. Applicant used its portion of the basement for office and storage space. Tr. p. 178.

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7. For a description of these programs, *see*, Findings of Fact 42-46 *infra* at pp. 17-18.

E. Use Issues

24. RSG was open Tuesdays through Saturdays from 12 to 6 p.m. during the entire 1994 assessment year. It adhered to these same hours throughout most of the 1995 assessment year except that, beginning in September, it was open Wednesdays through Fridays from 12 to 8 p.m. and Saturdays from 12 to 6 p.m. Applicant Ex. Nos. 5-0, 5-T.
25. Applicant conducted a variety of fine-arts programming at the subject premises during 1994 and 1995. These programs included an annual art auction that raised funds to support applicant's operations,<sup>8</sup> film festivals, art exhibitions some of which were combined with lectures, theater in the round, musical performances, sculpture exhibitions, public workshops and classes. Applicant Ex. Nos. 5-O, 5-P, 5-Q, 5-R, 5-T.
26. Applicant held approximately 62 performances, exhibits and other related events at the subject premises between February of 1994 and October of 1995. It charged admission or other fees to approximately 41 (66%) of these events.<sup>9</sup> *Id.*

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8. The proceeds from these annual sales are shown on the financial statements reproduced in Findings of Fact 13, 15, *infra* at pp. 8, 10.

9. The pamphlets admitted as Applicant Ex. Nos. 5-O, 5-P, 5-Q, 5-R and 5-T are silent as to whether admission was charged to the remaining 34% of these events.

27. Applicant advertised these programs via fliers and a series of pamphlets it distributed via the United States mail. All of the pamphlets contain short program descriptions as well as scheduling information (dates, times, etc.) for particular events. *Id.*
28. The pamphlets also indicate the exact amount of any admission charge or fee. With five exceptions, they also do not state anything about applicant's capacity to waive or reduce such charges or fees that it imposes.<sup>10</sup> *Id.*
29. Applicant adhered to a "pay as you go policy" during the years in question. Under this policy, those who could not pay full admission fees were allowed to attend performing arts events if they paid whatever they could afford. Thus, if admission to a given even was \$8.00 and a person wishing to attend could only pay \$2.00, applicant admitted the person for \$2.00. *Id.*; Tr. pp. 181-183.
30. RSG's "pay as you go" policy is not mentioned in any of the pamphlets describing its scheduled events. Applicant Ex. Nos. 5-O, 5-P, 5-Q, 5-R, 5-T.
31. Applicant also admitted those who were unwilling to pay with the attitude that if the unwilling person had a positive experience the one time he/she did not pay,

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10. These exceptions are found in: (1) Applicant Ex. No. 5-P, p.4, which advises that free admission is available to the public preview of an exhibit called the "File Room." This preview was not, however, held at the subject premises; (2) Applicant Ex. No. 5-P, p.6, which discusses a free lecture by artist and author Maris Bustamante; (3) Applicant Ex. No. 5-P, p. 8, which advises about the availability of sliding scale workshop fees for a workshop called "Explore the Creative Process[;]" (4) Applicant Ex. No. 5-Q , p. 8, which mentions the availability of free admission to a lecture with the purchase of performance tickets to "Slight Return[;]" and (5) Applicant Ex. No. 5-T, p.8, which mentions a free workshop by composer Laetitia Sonomi.

that person would eventually come back and make some form of remuneration.  
Tr. p. 182.

32. Most of the proceeds from admissions and other charges went to pay the performing artists' fees or offset that individual's production expenses. *Id.*
33. Applicant chose performing artists (i.e. those who exhibit or give performances, workshops, etc. at the Gallery) via a selection process. Most of the work is done by various committees that consist of a paid professional staff and numerous volunteers. Tr. pp. 183-184.
34. Committees met at least once a month to review and evaluate the numerous submissions that applicant receives. RSG ultimately presented only one in ten of these submissions. *Id.*; Tr. pp. 224-225.
35. Those selected to perform or exhibit at RSG were subject to the terms and conditions of various contracts that applicant entered into with each performer. Tr. p. 227.
36. Applicant did not submit such contracts into evidence. However, their sum and substance required that applicant pay for and/or provide: (1) marketing and publicity surrounding the event; (2) any necessary technical production costs (e.g. sound, lighting or stage technicians, etc.); (3) shipping costs, in the case of artists whose work needs to be transported from out of town; and (4) artist fees or honoraria payments, which range from \$150.00 to \$5,000 but depend on the scope of the particular artist's presentation. Tr. pp. 227-228.



37. The artists were to present their artworks in exchange for the above considerations. They also conducted workshops, taught classes or led discussions in many cases. Tr. p. 228.
38. The artists never paid RSG for use of performance space. Applicant did, however, reject artists who wished to perform because it could not afford the fees or honoraria they requested. Tr. pp. 228-230.
39. RSG also rejected artists because it decided their work lacked relevance, quality or was inconsistent with the themes it selected for a given year. *Id.*
40. Applicant also used the portion in dispute to plan and seek money for an arts program it operates in conjunction with other community organizations. This program, known as "Team Arts Pursuits" (hereinafter "TAP"), offered a variety of instructional and participatory fine arts programs to area youths, adults, families and senior citizens. Tr. pp. 71, 96, 201, 203.
41. RSG originally conceived the TAP in conjunction with Youth Options Unlimited (hereinafter "YOU"), an umbrella organization for six or eight different community social service agencies. Their founding purpose was to raise the quality of arts programming for youth at area settlement houses. Tr. pp. 71, 73, 88-89.
42. Applicant and YOU began planning TAP in the fall of 1994 and started implementing its constituent programs in the spring of 1995. Tr. p. 76.

43. Some TAP programs involved students from the Chicago Academy for the Arts (hereinafter "CAFA")<sup>11</sup> providing instruction in theater, dance, or the visual arts to children at the settlement homes. Tr. p. 80.
44. Those who participated in these instructional programs did so on a voluntary basis. They did not receive any course credit for participating. Tr. pp. 80-81.
45. Other aspects of the TAP program included: (1) performances by a theater group consisting of CAFA students; (2) a professional artist who helped area children develop and publish their own cartoon book; (3) originating and developing other publications, like a book of photographs and poems; (5) planting a community garden and (6) exhibitions of various art forms, such as paintings, sculptures and drawings. Applicant Ex. Nos. 5-J, 5K; Tr. pp. 90, 191-197, 204-205.<sup>12</sup>
46. Venues for the various TAP activities included not only the Gallery itself and the settlement houses,<sup>13</sup> but also Eckert Park, which is part of the Chicago Park System, the Union League Boys and Girls Club, and Casa Central, all of which were located in close proximity to the subject property. Tr. pp. 156, 201-205, 208.

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11. CAFA is a private, not for profit high school in which the students take academic courses in the morning and have an extended variety of art forms in the afternoon. Its graduates receive a high school diploma after completing their four year course of study. Tr. p. 62.

12. For a more comprehensive description of the TAP program, *see*, Applicant Ex. No. 5-L.

13. Most of the settlement houses and other TAP venues were located nearby the subject property. For a comprehensive listing of these venues, their locations and the TAP activities conducted therein, *see*, Tr. pp. 201-205.

47. Students from CAFA and the School of the Art Institute of Chicago (hereinafter "SAIC") did internships at the Gallery during the years in question.<sup>14</sup> Approximately four to five SAIC students interned at the gallery during each semester.<sup>15</sup> They were selected via an interview process wherein applicant chose the most qualified students from a pool of referrals that SAIC provided. Tr. pp. 17, 22, 37-39.
48. Those selected for internships gained experience in exhibit development and installation, as well as other areas affecting an artist's work. Tr. pp. 17, 22.
49. SAIC interns were paid for their services. They received payment through SAIC's student payroll system. However, their wages were funded by contracts between applicant and SAIC which required that the latter pay 65% of the intern's wage. Applicant was, in turn, billed for the remaining 35% after the semester ended. Tr. pp. 23-24, 231.
50. CAFA arranged its student internships via a contract between itself and the TAP program. Applicant did not submit this contract into evidence. However, CAFA controlled placement because it had more students wanting RSG internships than it could place. Tr. pp. 92-93.
51. CAFA interns were not paid for their services. They received elective course credit from CAFA in exchange for their volunteer efforts, which included

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14. Applicant employed 15 student interns in 1994 and the same number during 1995. Some of these interns came from schools other than SAIC, such as the University of Illinois at Chicago, Columbia College and Associated Colleges of the Midwest. Applicant Ex. Nos. 5-M, 5-N.

15. SAIC's semesters were 15 weeks long in the fall or spring and eight in the summer. Tr. p. 39.

working at the Gallery as assistants or teaching drawing, theater and other classes a nearby community center. Tr. pp. 65-55, 69-70, 80, 82, 91, 93, 95.

52. RSG participated in these internships through the TAP program. It also provided staff to mentor and supervise CAFA students who were teaching at various community centers. Tr. p. 66.
53. CAFA students also went to the Gallery on a regular basis to talk with visiting artists or attend workshops, rehearsals and the like. Applicant did not charge the students or CAFA for attending these functions or other functions at the Gallery. Applicant Ex. Nos. 5-M, 5-N; Tr. pp. 67-68, 78.
54. Columbia College (hereinafter "Columbia") also placed interns at the Gallery. It also co-sponsored some of the exhibitions, lectures or performances that applicant held at the Gallery. Tr. p. 44.
55. Columbia also offered one of its courses at the Gallery and arranged for some of its students, including those giving their final masters' theses projects, to exhibit or perform there. Tr. pp. 44-46, 53.
56. Students presenting their masters' theses at the Gallery usually relied on their own initiative to begin a relationship with RSG. They do, however, use Columbia's interdisciplinary arts department as an official liaison for their projects. Tr. p. 47.
57. Columbia also required students working toward their masters' degrees in interdisciplinary arts to attend various lectures. Some of these lectures<sup>16</sup> were held at the Gallery. Any admission charges to these lectures were drawn from the tuition that students paid to Columbia. Tr. pp. 49-50, 55-56.

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16. Exact number unspecified.

58. Approximately five graduate students from the School of Art and Design at the University of Illinois at Chicago (hereinafter "UIC") exhibited their artwork at the Gallery. Applicant did not charge any of these students for exhibiting. Tr. pp. 127, 140-141.
59. UIC students also attended lectures or other activities at the Gallery, many of which were free of charge, as part of their coursework. Tr. pp. 127, 129, 134.
60. Other uses<sup>17</sup> of the subject property included: (1) holding tours of the Gallery, which applicant provided free of charge;<sup>18</sup> (2) providing meeting space for various organizations, including the Women's Action Coalition, a feminist organization, and Gay and Lesbian Cultural Workers; (3) serving as one of the venues for a film festival organized by Women in the Director's Chair, a group dedicated to exhibiting and promoting alternative media made by women that reflects a diversity of cultures, experiences, issues and styles; and (4) hosting an unspecified number of panels or discussions which were free to the public and addressed a variety of social and cultural topics;<sup>19</sup> Applicant Ex. Nos. 2-A, 2-B, 2-C; 5-O, 5M, 5N; Tr. pp. 113, 115 215-216.
61. The City of Chicago Department of Cultural Affairs received advice from RSG personnel when planning a youth employment program that focused on the arts.

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17. For additional details about these and other uses, *see*, Applicant Ex. Nos. 5-M, 5-N.

18. Total attendance at these guided tours was 450 in 1994 and 250 in 1995. Applicant Ex. Nos. *Id.*

19. Total attendance at these events was 460 in 1994 and 760 in 1995. *Id.*

This project, known as Gallery 37,<sup>20</sup> did not make use of the subject property during the years in question. Tr. pp. 101, 110.

62. Applicant also served as the fiscal and managerial agent for Street Youth Media, a group devoted to teaching multimedia skills, such as video making and Internet use, to inter city teens. Tr. pp. 206, 271, 274.

### **CONCLUSIONS OF LAW:**

An examination of the record establishes that this applicant has not submitted evidence and argument sufficient to warrant exempting the subject parcels from 1994 and 1995 real estate taxes. Accordingly, under the reasoning given below, the Department's determinations that said parcel (or more precisely, the portion in dispute) does not satisfy the statutory requirements set forth in 35 ILCS 200/15-65 should be affirmed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-

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20. For a description of the Gallery 37 program, *see*, Applicant Ex. No. 3-A, 3-B.

executing provision. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery of Philo, Illinois v. Rose, 16 Ill.2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist. 1983).

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code, 35 ILCS 200/1 *et seq.* The provisions of that statute which govern the present proceeding are found in Section 200/15-65 thereof, the potentially relevant parts of which state that:

All property of the following is exempt [from real estate taxation] when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) institutions of public charity.
- (b) Beneficent and charitable organizations incorporated in any state of the United States, including organizations whose owner, and no other person, uses the property exclusively for the distribution, sale, or resale of donated goods and related activities and uses all the income from those activities to support the charitable, religious, or beneficent activities of the owner, whether or not such activities occur on the property;
- (c) Old people's homes, facilities for persons with developmental disability and not for profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for the exemption, the applicant provides affirmative evidence that the home or facility or organization is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code<sup>21</sup> or its successor, and either: (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based on an individual's ability to pay, of any

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21. 26 U.S.C.A. § 501.

entrance fee, assignment of assets, or fee for services, or  
(ii) the home or facility is qualified, built or financed under  
Section 202 of the National Housing Act of 1959, as  
amended.<sup>22</sup>

35 ILCS 200/15-65(a), (b), (c).

It is well established in Illinois that a statute exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. the Association of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption, and have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App.3d 678 (4th Dist. 1994).

Here, the relevant exemption applies to "institutions of public charity." Our courts have long refused to apply this exemption absent suitable evidence that the property in question is owned by an "institution of public charity" and "exclusively used" for purposes which qualify as "charitable" within the meaning of Illinois law. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968) (hereinafter "Korzen"). They have also ascribed to the following definition of "charity[.]" originally articulated in Crerar v. Williams, 145 Ill. 625, 643 (1893):

... a charity is a gift to be applied consistently with existing laws,  
for the benefit of an indefinite number of persons, persuading them  
to an educational or religious conviction, for their general welfare -  
or in some way reducing the burdens of government.

The Illinois Supreme Court has effectuated this definition by observing that all  
"institutions of public charity" share the following "distinctive characteristics[:]"

- 1) they have no capital stock or shareholders;

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22. 12 U.S.C.A. 1701(q)..



2) they earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters;

3) they dispense charity to all who need and apply for it;

4) they do not provide gain or profit in a private sense to any person connected with it; and,

5) they do not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses.

Korzen at 157.

Before analyzing the merits of applicant's status as an "institution of public charity," I reject RSG's submission, (found at page 3 of its brief), that this case should be decided under Sections 200/15-65(b) and/or 200 /15-65(c). Contrary to applicant's position, the former does not provide for exemption of properties owned by "[b]eneficent and charitable organizations that use property exclusively for its charitable purposes." (Applicant's brief, p. 3). Rather, its plain language imposes much more specific requirements which our courts have applied in the limited context of thrift shops. Gift Music Ministries, Inc. v. Department of Revenue, Docket Number 93-L-50314 (Circuit Court of Cook County, August 1, 1995). By its own admission, this applicant operates a community-based performing arts center, rather than a thrift store, on the portion in dispute. (*Id.* at p.5). Thus, Section 200/15-65(b) is inapplicable herein.

The plain language of Section 200/15-65(c) speaks of "old people's homes ... and [other] not-for profit organizations providing services or facilities related to the goals of educational, social *and* physical development ...[.]" [emphasis added]. RSG is a performing arts center, not an old people's home. It also does not appear that applicant operates the type of therapeutic or rehabilitational facility that Section 200/15-65(c) seems designed to exempt. *Cf. Korzen, supra.*

More importantly, the aforementioned excerpt is phrased in conjunctive rather than disjunctive terms. Thus, applicant can not obtain exemption under Section 200/15-65(c) unless it presents affirmative evidence that its programs further all three of the statutorily-stated developmental goals.

Additionally, applicant's programs contribute to educational and social development by bringing arts-related programming to settlement houses and other areas of the community. However, RSG's evidence fails to demonstrate how these program further the physical development of those who participate. Absent such evidence, I must conclude that Section 200/15-65(c) does not apply to the present case. Therefore, the portion in dispute can not be exempted from 1994 and 1995 real estate taxes unless applicant itself qualifies as an "institution of public charity" within the meaning of Section 200/15-65(a).

The leading case on the charitable status of arts organizations, such as applicant, is Du Page Art League v. Department of Revenue, 177 Ill. App.3d 895 (2<sup>nd</sup> Dist. 1988) (hereinafter "Du Page Art League"). There, the court reversed a lower court's decision holding that the Art League's property qualified for exemption under the then-applicable version of Section 200/15-65.<sup>23</sup>

The appellate court began its analysis by noting that while "[a]n art studio or art gallery established for the benefit of the public for the advancement of education in art *can* be a charity," such studio or art gallery can not be exempt from real estate taxes unless it proves conformity with the criteria articulated in Korzen. (emphasis added). Du Page Art League, *supra* at 900, citing Mason v. Bloomington Library Association, 237 Ill. 442, 449 (1909).

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23. That version was found at Ill. Rev. Stat. 1987, ch. 120, ¶ 500.7.

The court held that the Art League did not satisfy at least four of those criteria, namely (1) charity was not "dispensed to all who need and apply for it[;]" (2) obstacles were placed in the way of those who attempted to avail themselves of the charity; (3) the Art League's members impermissibly profited from the enterprise; and (4) applicant's revenues came from tuition, membership fees and commissions from the sale of art rather than sources specified in Korzen. Du Page Art League, *supra* at pp. 900-902.

With respect to the first two criteria that the Art League did not satisfy, the court noted that only one of plaintiff's 513 dues-paying members was not required to pay dues because of an inability to pay. *Id.* at 900. It also observed that "nothing in plaintiff's by-laws requires it to waive membership dues or tuition because of an inability to pay" (*Id.*, citing Korzen, *supra* at 159) and that "[n]one of plaintiff's brochures informs the public that plaintiff's benefits are available without charge in a proper case." *Id.* at 900-901, citing Highland Park Hospital v. Department of Revenue, 155 Ill. App.3d 272, 280-281 (2d Dist. 1987), (hereinafter "HPH").<sup>24</sup>

The court next noted that the Art League's active members impermissibly profited from its operations in that they were the only ones permitted to show their work in the art gallery. More importantly, the Art League required that these members offer their works for sale and

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24. The HPH case involved a health care center that circulated advertisements to promote the center's services. Among other things, these advertisements described the available services and set forth appellant's hours. They also advised that care was available without appointment and that services were provided on a low-cost basis when compared to other facilities. However, the advertisements did not mention that free care was available to those unable to pay. The court viewed this omission as a failure of proof because it raised doubts as to whether members of the general public in fact knew free care was available at the allegedly-exempt facility. HPH at 280.

allowed them to retain 80% of any sale proceeds. Under these circumstances, the court concluded that the Art League's "members gain a distinct advantage not afforded to non-members by the opportunity to sell, promote, and familiarize the community with their work." *Id.* at 901.

The present case has much in common with DuPage Art League. For instance, the by-laws that applicant operated under during the 1994 and 1995 tax years did not mention anything about waiving fees, dues, etc. While the amendment submitted as Applicant Ex. No. 5-C does authorize fee waivers, this amendment is irrelevant to the present proceeding because it did not take effect until March of 1996. Moreover, the amendment does not mention *anything* about waiving or reducing membership dues based on an individual's inability to pay.

In addition, neither this amendment nor any other part of applicant's organizational documents contains any specific reference to charity. Illinois courts have, on more than one occasion, indicated that lack of such wording in organizational documents can provide evidence that the applicant is not in fact organized for exempt purposes. People ex rel. Nordlund v. Association of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968); Albion Ruritan Club v. Department of Revenue, 209 Ill. App.3d 914 (5th Dist. 1991). Furthermore, the provisions of applicant's by-laws that authorize automatic termination of membership for default or non-payment of dues are distinctly non-charitable. Korzen, *supra* at 158.

The advertisements submitted as Applicant Ex. Nos. 5-O, 5-P, 5-Q, 5-R and 5-T are totally devoid of any reference to applicant's "pay as you go" policy. Nor do they contain anything but selected and isolated references to instances where applicant was willing to waive or reduce any of the charges or fees that it imposed. One of these references pertained to an

event that did not take place at the Gallery. Others stated that free or reduced admissions would be available with the purchase of tickets to a performance. *See*, footnote 8.

These considerations, coupled with the lack of any mention of fee waivers, etc. in the financial statements, raise doubts as to the consistency with which applicant reduced fees, admission charges or membership dues during the years in question. Such doubts must be resolved in favor of taxation. Consequently, I conclude that this portion of applicant's evidence is equivocal at best. Therefore, it falls short of the clear and convincing standard necessary to establish that applicant qualifies as an "institution of public charity." *Cf. HPH, supra*.

This case is also similar to Du Page Art League in that the artists who perform at the Gallery profit from the enterprise. The record does not indicate whether these artists hold membership in RSG. However, the record does establish that RSG chooses these artists via a very selective screening process wherein only one in ten artists ultimately exhibits or performs at the gallery.

Such a process seems more attuned to satisfying art connoisseurs than dispensing charity. Thus, the artists chosen to perform gain a distinct advantage (i.e. performing or exhibiting) that is not available to those whom the Gallery rejects. More importantly, RSG allowed these artists to obtain fiscal profit from its enterprise by paying them fees or honoraria that ranged from \$150.00 to \$5,000.00.

One might distinguish Du Page Art League on the grounds that applicant does not actively engage in the sale of art work on a regular basis. (Tr. p. 265). Applicant does, however, hold an annual fund-raising art auction wherein the participating artists receive a percentage of the proceeds from sales of their artwork. (Tr. pp. 262-265). Any economic gains the artists receive from these proceeds are probably minimal when compared to those associated with the

artist payments and honoraria. However, if one combines these considerations with the various benefits that come from being selected to perform at RSG (free publicity and technical support, exposure to audiences in a major metropolitan area, etc.), it becomes apparent that the 10% so selected enjoy distinct economic and other advantages vis-à-vis the remaining 90% who are not chosen through applicant's highly discerning selection process. Thus, for all the above-stated reasons, I conclude that Du Page Art League provides viable precedent for determining that RSG does not satisfy the third, fourth and fifth prongs of the test enunciated in Korzen.

The above discussion assumes that the performing artists, rather than the general public, are the primary beneficiaries of RSG's operations. While the TAP and other programs provide evidence that this is not the case, the financial statements submitted as Applicant Ex. Nos. 6-A, A-B and 6-C do not mention TAP and also fail to disclose what amounts, if any, applicant spent on TAP and the other allegedly "charitable" programs during the years in questions. Absent such information, I must conclude that the present case parallels a line of decisions wherein exemptions were denied because the respective records lacked evidence of any charitable disbursements or supported a conclusion that such expenditures were non-existent or *de minimus*. Rogers Park Post No. 108 v. Brenza, 8 Ill.2d 286, 291 (1956) (hereinafter "Rogers Park"); Morton Temple Association v. Department of Revenue, 158 Ill. App.3d 794 (3rd Dist. 1987); Albion Ruritan Club v. Department of Revenue, 209 Ill. App.3d 914, 919 (5th Dist. 1991); Auburn Park Lodge No. 789 v. Department of Revenue, *supra*.

Moreover, the detailed financial analyses contained in Findings of Fact 12, 14 and 16 (*supra* pp. 7-12) establish that applicant consistently directed most of its expenditures toward gallery operations. Said analyses further disclose that artist payments were RSG's second biggest expense throughout the years in question, at least on a percentage basis. Given this and

all the above considerations, it seems impractical to conclude that applicant's expenditures were primarily geared toward charitable endeavors in those years.

Such considerations render the conclusion that applicant qualifies as an "institution of public charity" likewise infeasible. Therefore, those portions of the Department's determinations that denied exemption based on lack of exempt ownership should be affirmed. However, applicant tries to alter the above conclusion by arguing that the TAP and other programs (internships, etc.) provide evidence of exempt use. Applicant also fails to satisfy this requirement for tax exemption.

The exempt status of real estate is determined by its actual, rather than intended use. Skil Corporation v. Korzen, 32 Ill.2d 249 (1965); Comprehensive Training and Development Corporation v. County of Jackson, 261 Ill. App.3d 37 (5th Dist. 1994). Applicant did not begin planning TAP until the fall of 1994. It also did not implement any TAP programming until the spring of 1995. Based on these factors, I conclude that TAP was, at best, an intended use throughout most of the years in question.

It may be true that property may be exempted where applicant proves that it is actually in the process of being adapted and developed for an eventual charitable use. *See*, Weslin Properties v. Department of Revenue, 157 Ill. App.3d 580 (2nd Dist. 1987) (hereinafter "Weslin Properties"). It is likewise permissible to exempt property actually used for administrative offices, where such use is "reasonably necessary" to fulfill a specifically identifiable exempt purpose. *See*, Evangelical Hospitals Corporation v. Department of Revenue, 233 Ill. App.3d 225 (2nd Dist. 1991) (hereinafter "EHC").

Both of these holdings assume that the applicant itself qualifies as an "institution of public charity." *See*, Weslin Properties, *supra*, at 584; EHC, *supra* at 230. The preceding

analysis demonstrates that this applicant does not so qualify. Consequently, any TAP planning that applicant did during the years in question was not "reasonably necessary" to further a "charitable" purpose. Moreover, this record lacks evidence indicating that applicant was actually adapting and developing any part of the portion in dispute specifically for TAP or any other use that would eventually qualify as "charitable". Furthermore, most of the TAP programs applicant *did* present during 1995 were *not* held at the Gallery itself. Therefore, I conclude that EHC and Weslin Properties are inapplicable herein.

The Gallery *itself* was primarily used as a venue for exhibiting or performing works of a select group of artisans who profited from applicant's enterprise. Consequently, it follows that any other uses (including TAP) were incidental thereto. Therefore, all such uses are factually and legally insufficient to establish that the Gallery *itself* was primarily used for exempt purposes throughout the 1994 and 1995 tax years. Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987); Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993).

Notwithstanding the above, it appears unlikely that the other alleged "charitable" uses qualify as exempt. For instance, all of the internships were carried out pursuant to contracts that applicant negotiates at arm's length with CAFA, SAIC and other entities. Accordingly, it appears that applicant was doing business with, rather than dispensing "charity" to, these entities.

Applicant also did not submit any evidence establishing the exempt status of the Women's Action Coalition or the Gay and Lesbian Cultural Workers, organizations which it allowed to meet in the Gallery free of charge.<sup>25</sup> However, even if it did, the testimony of

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25. This situation is distinguishable from that found in Children's Development Center, Inc. v. Olson, 52 Ill.2d 322 (1972), wherein the court held in favor of exempting a leasehold wherein *both* the lessor and the lessee were exempt entities and the lessee used the



Melinda Powers strongly suggests that the former is a political or social organization that operates primarily for the benefit of its own members.<sup>26</sup> *See*, Tr. p. 239.

This analysis also applies to uses associated with Women in the Directors' Chair. Even if it did not, the record establishes that the Gallery was but one of several venues for that organization's film festival. Hence, it appears very unlikely that this was the primary focus of applicant's *own* operations.

Taken as a whole, the preceding analysis establishes that applicant does not qualify as an "institution of public charity" within the meaning of Section 200/15-65. Said analysis further verifies that RSG did not "actually and exclusively" use the portion in dispute for purposes that qualify as "charitable" during the 1994 and 1995 assessment years. Therefore, those portions of the Department's determinations that denied exemption based on lack of exempt ownership and lack of exempt use should be affirmed.

Applicant's exemptions from federal income, Illinois Use and other non-related taxes<sup>27</sup> do not alter the preceding conclusions. These exemptions do not establish that the portion in dispute was actually used for exempt purposes during the years in question. People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill.2d 450 (1970). Furthermore, while the exemption from federal income tax establishes that applicant is an exempt organization for purposes of the relevant Sections of the Internal Revenue Code, these Sections do not preempt

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leasehold for purposes that would have qualified as exempt if the lessee itself had owned (rather than rented) the leasehold premises.

26. For analysis as to why similar organizations fail to qualify as "charitable", *see*, Rogers Park, *supra*.

27. I use the adjective "non-related" to connote the statutory, conceptual and functional differences between the *ad valorem* real estate taxes presently under review and the federal income, State use and other related sales taxes which are not at issue herein even though applicant is exempt therefrom.

Section 200/15-65 or any other statutory provisions governing exemptions from real estate taxation in the State of Illinois. Consequently, neither this nor the exemption from State Use and related taxes are dispositive of the present inquiry, which is whether applicant satisfies the ownership and use requirements set forth in Section 200/15-65.

RSG posits that three cases, Vermillion County Museum Society v. Department of Revenue, 273 Ill. App.3d 675 (4<sup>th</sup> Dist. 1995) (hereinafter "VCMS"); Highland Park Women's Club v. Department of Revenue, 206 Ill. App.3d 447 (2<sup>nd</sup> Dist. 1991) (hereinafter "HPWC") and Resurrection Lutheran Church v. Department of Revenue, 212 Ill. App.3d 964 (1<sup>st</sup> Dist. 1991) (hereinafter "RLC") provide a positive answer to that inquiry. However, I find each of these cases readily distinguishable from that of RSG.

The VCMS court addressed an issue not raised in the present case, that being whether a parking lot adjoining a historical museum qualified for exemption under the statute that (with certain stated conditions not here relevant) exempted parking areas of exempt institutions.<sup>28</sup> The court indicated that the museum's minimal admission charges and membership fees<sup>29</sup> posed an "insignificant hinderance" to exemption of the museum itself. VCMS, *supra* at 679. However, Justice McCullough's dissent argued that "[b]ecause the [museum itself] does not have an approved exemption, the exemption for the parking lot must fall. I reiterate, *this case does not concern taxation of the building*, I do suggest the Society has a responsibility to pursue tax exempt status for [the museum itself], as required by the statute, if that is its desire." *Id.* at 680-681. (McCullough, J. dissenting).

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28. The version of that statute at issue in VCMS was found in Ill. Rev. Stat. ch. 120, par. 500.16. Its current version is codified at Section 200/15-125 of the Property Tax Code, 35 **ILCS** 200/15-125.

29. The admission charge was \$1.00 for adults, 50¢ for children. The admission fee was \$10.00 per year. VCMS, *supra* at 679.

Notwithstanding the above, it should be noted that this applicant's membership fees range from \$25.00 to \$200 per year. These sums not only exceed the \$10.00 found "insignificant" in VCMS, they also entitle members to discounted admissions and other benefits that are not available to non-members. In this sense, the present case is more analogous to DuPage Art League, *supra* than VCMS. For this reason, and because my comments regarding the applicant's admission fees (most, if not all of which were higher than \$1.00 or 50¢), *supra* at pp. 29-30, also serve to distinguish this case from VCMS, I conclude that applicant's reliance thereon is misplaced.

The primary issue in HPWC, *supra* was, unlike the present case, whether a private citizen/taxpayer had standing to challenge tax exemptions granted to the Highland Park Women's Club and the Ravinia Festival Association (hereinafter "Ravinia") for the 1985 tax year. The court held in the affirmative<sup>30</sup> and then proceeded to analyze whether lands used for food stands and a gift shop qualified for exemption under the then applicable-version of Section 200/15-65.<sup>31</sup> Although the court held in favor of exempting these lands on grounds that they were incidental to Ravinia's overall charitable purpose, its reasoning is inapplicable herein because: (1) unlike the present case, "[t]he Department concluded that Ravinia was a charitable organization ..." (HPWC, *supra* at 447); (2) the court was addressing incidental rather than primary uses; (3) in order to qualify for exemption this applicant must, under the above-stated rules prove that its *primary* use qualifies as "charitable"; and (4) this applicant is not seeking exemption for property used for food stands and a gift shop, but rather, for a portion of real estate that is used primarily as a venue for displaying and performing the works of a very select group of artisans who profit from applicant's enterprise.

Analysis found *supra* at pp. 28-31 establishes that this latter, yet primary use, does not qualify as "charitable". Accordingly, any incidental uses associated therewith can not be

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30. Those interested in the court's analysis of that issue are referred to HPWC, *supra*, at 455-463.

31. That version was found in Ill. Rev. Stat. 1985, ch. 120, ¶ 500.7.

considered equivalent to those at issue in HPWC because they do not further an overall exempt purpose. Therefore, applicant's reliance on HPWC is misplaced.

In RLC, *supra*, the court held in favor of exempting a leasehold which the owner, a tax-exempt church, demised to a not-for-profit corporation. This corporation, the MoMing Dance and Arts Center, (hereinafter "MoMing"), used the leasehold for presenting works of contemporary dance. While it did not regularly waive or reduce admission prices for these performances, MoMing did give some tickets to a home for the mentally handicapped. It also gave away or discounted some tickets for certain performances. RLC, *supra* at 9687-968.

MoMing also offered classes in contemporary dance, for which it charged tuition of \$5.00 per session, on the demised premises. It did not waive or reduce this tuition, but instead, offered a work study program whereby students who could not afford to pay for the classes were assigned janitorial and other jobs in exchange for the right to attend classes. In addition, MoMing operated a visual arts gallery on the leasehold. Admission to the gallery was free and open to the public. However, MoMing received 20% of the proceeds from any artwork sold.

The court held that the sale of artwork constituted an incidental use which did not bar exemption. It also held that MoMing qualified as an "institution of public charity" within the relevant statute, primarily because the above considerations demonstrated that MoMing made some sort of accommodations for those who were unable to pay. *See, Id.* at 971-973.

At first blush, one might think that applicant's operations and uses parallel those of MoMing. However, deeper examination reveals that this is not the case for several reasons. First, those who wished to display their artwork in MoMing's visual arts gallery ostensibly were not subjected to the rigorous and highly particular selection process employed by this applicant. Moreover, analysis *supra* at pp. 29-30 raises doubts about the consistency with which applicant accommodated those who were unable to pay.

MoMing successfully dispelled such reservations partially by presenting evidence that it gave away tickets to some of its performances. This applicant offered no such evidence and thereby exacerbated the aforementioned doubts, all which must be resolved in favor of taxation.

One could nevertheless argue that applicant's internships are somewhat analogous to MoMing's work study program. However, this analogy fails to recognize no fewer than three distinctions: (1) the former are carried out strictly according to the terms of contracts that applicant negotiates at arm's length with the various institutions; (2) for this reason, the internships are, in reality, manifestations of business relationships that applicant maintains with such institutions; and (3) some of the interns are paid for their services, while others receive course credit from appropriate institutions.

Given these distinctions, I can not conclude that the interns provided such services in exchange for opportunities to attend workshops or other Gallery activities free of charge. Consequently, it seems that the interns' relationship to the Gallery is more accurately characterized as that of an employee to his/her employer than a beneficiary to a charity. Therefore, any attempted comparisons between MoMing's work study program and RSG's internships at issue herein are illusory at best.

Despite the above, one might compare this case to RLC on grounds that the sale of artwork was but an incidental use of the properties in question during the years for which exemption was being sought. RLC at 972. While this is undoubtedly true, the preceding analysis demonstrates that there are other important distinctions between RLC and this case. Even if these differences were not present, the RLC court did not distinguish or otherwise mention Du Page Art League, supra. Thus, it apparently did not adhere to the framework that court established for applying Korzen, supra to performing or visual arts organizations.

Of greater importance however, is the fact that applicant's primary use, (which I reiterate and re-emphasize is providing a venue for displaying and performing the works of a very select group of artisans who profit from applicant's enterprise), does not qualify as "charitable". Consequently, I conclude that RLC is legally and factually distinguishable from the present case. I further conclude that, for all the above stated reasons, the portion in dispute was not in exempt use during 1994 and 1995. Therefore, those portions of the Departmental determinations which denied exemption based on lack of such use should be affirmed.

Taken as a whole, the antecedent analysis demonstrates that the portion in dispute is not exempt under Section 200/15-65. As an alternative, applicant posits that said portion is exempt under 35 ILCS 200/15-35. In relevant part, that provision states that:

All property donated by the United States for school purposes and all property *of* schools, not sold or leased or otherwise used with a view to profit, is exempt [from real estate taxation], whether owned by a resident or non resident of this State or by a corporation incorporated in any state of the United States. Also exempt is:

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(b) property *of* schools on which the schools are located and any other property of schools used by the schools exclusively for school purposes, including, but not limited to, student residence halls, dormitories and other housing facilities for students and their spouses and children, staff housing facilities, and school-owned and operated dormitory or residence halls occupied in whole or in part by students who belong to fraternities, sororities, or other campus organizations.

35 ILCS 200/15-35. [Emphasis added].

The preposition "of," which appears in both the above-referenced sections, connotes an ownership requirement. Korzen, *supra*. The deed admitted as Applicant Ex. No-5U establishes that applicant owns the portion in dispute. However, neither this nor any other evidence of record establishes that applicant qualifies as a "school," a term to which our courts have ascribed the following definition:

A school, within the meaning of the Constitutional provision, is a place where systematic instruction in useful branches is given by methods common to schools and institutions of learning, which would make the place a school in the common acceptance [sic] of the word.

People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132 (1911); People v. Trustees of Schools, 364 Ill. 131 (1936); People ex rel Brenza v. Turnverein Lincoln, 8 Ill.2d 188 (1956), (hereinafter "Brenza").

One must also recognize the economically-based policy rationale whereby our courts have justified the exemption of "schools." This rationale, best articulated in Brenza, *supra*, is as follows:

It seems clear from the foregoing that this constitutional tax exemption for private educational institutions was intended to extend only to those private institutions which provide at least some substantial part of the educational training which otherwise would be furnished by publicly supported schools, academies, colleges and seminaries of learning and which, to some extent, thereby lessen the tax burden imposed upon our citizens as the result of the public educational system.

Brenza at 202-203.

Subsequent decisions have sought to enforce this rationale and the aforementioned definition of "school" by requiring private entities, such as applicant, to prove two propositions by clear and convincing evidence: first, that applicants offer a course of study which fits into the general scheme of education established by the State; and second, that applicants substantially lessen the tax burdens by providing educational training that would otherwise have to be furnished by the State. Illinois College of Optometry v. Lorenz, 21 Ill.2d 219 (1961), (hereinafter "ICO"). *See also*, Coyne Electrical School v. Paschen, 12 Ill.2d 387 (1957); Board of Certified Safety Professionals of the Americas v. Johnson, 112 Ill.2d 542 (1986); American College of Chest Physicians v. Department of Revenue, 202 Ill. App.3d 59 (1st Dist. 1990); Winona School of Professional Photography v. Department of Revenue, 211 Ill. App.3d 565 (1st Dist. 1991) (hereinafter "Winona").

In ICO, the court began analyzing whether applicant's optometry school satisfied the above criteria by noting that "The Illinois Optometric Practice Act<sup>32</sup> has expressly declared that the practice of optometry in this State affects the public health, safety and welfare ...[.] ICO, *supra* at 219. The court further observed that the General Assembly intended "to elevate the practice of optometry to that of a profession or skilled occupation similar to the practice of medicine, surgery or dentistry." *Id.*

RSG has not cited any authority establishing, and my research has failed to disclose, any legislative declaration pertaining to the visual or performing arts which is akin to the one found in ICO regarding the practice of optometry. Absent such a declaration, and without authority establishing that the General Assembly intended to elevate such arts "to a profession or skilled occupation," I must conclude that ICO, in which the court allowed exemption, is factually distinguishable from the instant case. *Accord*, American College of Chest Physicians, *supra*; Winona, *supra*.

It also bears noting that in Coyne Electrical, *supra*, the court based its decision to deny exemption in part on the fact that appellant's instructors were not qualified "to teach in common schools or high schools of this State." Coyne Electrical at 391. In this case, applicant established that TAP instructors and those who offer other workshops are either practicing artists or students enrolled at CAFA. Such evidence establishes that such instructors possess whatever skills are necessary to impart their knowledge of the visual or performing arts. It does not, however, establish that these instructors are qualified to teach in State-authorized schools.

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32. At the time ICO was decided, those provisions appeared at Ill. Rev. Stat. 1959, chap. 91, ¶ 105.2 *et. seq.* The current version is found in 225 **ILCS** 80/1 *et seq.*



Moreover, the holding in Winona, *supra*, which denied exemption to applicant's private photography school pursuant to the analyses set forth in ICO and Coyne Electrical, was partially based on the court's finding that the appellant therein was not accredited during the year in question, and therefore, did not offer "systematic instruction in useful branches of learning by methods common to institutions of learning." Winona at 571.

I have previously alluded to the fact that applicant does business with a number of accredited "schools", such as Columbia, UIC and CAFA. However, RSG did not present a scintilla of evidence establishing *its own* accreditation. For all the above reasons, and because it is the accredited schools, rather than *applicant itself* which provides the student-interns with credit for any work associated with their internships, I conclude that applicant does not qualify as a "school" within the meaning of Section 200/15-35. *Cf.* Milward v. Paschen, 16 Ill.2d 303, 310 (1959).

Applicant seeks to defeat the above by arguing that its internships and other programs are "reasonably necessary" to further the purposes of SAIC and the other institutions with which it does business. The leading case in this regard is MacMurray College v. Wright, 38 Ill.2d 272 (1967) (hereinafter "Wright").

Appellants in Wright were two colleges that sought exemption for certain faculty and staff housing facilities that were adjacent to their tax-exempt main campuses. The court held that although "[e]xemption will be sustained where it is established that the property is used primarily for purposes which are reasonably necessary for the accomplishment and fulfillment of the [exempt] educational objectives, or efficient administration of, the particular institution [sic]," applicants had failed to sustain their respective burdens of proof. *Id.* at 278. Specifically, the court found the record lacking in evidence which established that the faculty or staff were

required, "because of their educational duties, to live in these residences or that they were required to or did perform any of their professional duties there." *Id.* at 279. The court also noted that "there was no specific proof presented, aside from one isolated example, "to show that student, academic, faculty administrative or any other type of college-connected activities were ever actually conducted at [the facilities] by any member of the faculty or staff of either of the colleges." *Id.*

Here, the record establishes that RSG was but one of many venues at which the students could do their internships. Thus, it does not appear that the various institutions required that their internships and other related coursework be performed at the Gallery. Furthermore, any student exhibitions held at RSG do not result from academic requirements imposed by applicant. Rather, they stem from the curriculum requirements imposed by Columbia (which also acted as an official liaison for student projects) and other institutions. Consequently, such internships and other programs do not entitle applicant itself to exemption under the "reasonably necessary" standard articulated in Wright.

Moreover, analysis *supra* at pp. 31-34 establishes the internships, exhibitions, and like activities were, at best, incidental to applicant's non-exempt primary use. The financial statements submitted as Applicant Ex. Nos.6-A, 6-B, 6-C, which establish that the internships accounted for between 4% and 7% of applicant's total expenditures, only serve to bolster the conclusion of incidental use. Therefore, for all the above stated reasons, I conclude that the Gallery does not qualify for exemption under Section 200/15-35.

Finally, applicant posits that the above-stated denials violate its equal protection rights in that the Department has exempted similar properties. *See, The Performance Community v. Illinois Department Of Revenue*, Docket No. 90-16-1193. However, this argument assumes that

applicant qualifies as an "institution of public charity", which the preceding analysis establishes it does not.

I also find The Performance Community case factually distinguishable from that of RSG because the former record established that the applicant therein gave tickets away to various community youth organizations, senior citizens groups and others. The present record fail to establish that applicant engaged in like giveaways. More importantly, this record establishes that applicant used the portion in dispute primarily for the non-exempt purpose of displaying and performing the works of a selected group of artisans who profited from applicant's enterprise. For these reasons, and because applicant also fails to qualify as a "school" within the meaning of Section 200/15-35, I conclude that it does not satisfy the fundamental requirement of being similarly situated to other organizations granted exempt status. Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542, 548 (1986).

In summary, the portion in dispute does not qualify for exemption from 1994 and 1995 real estate taxes because applicant fails to satisfy the ownership and use requirements established in Section 200/15-65. It also does not fulfill the statutory and common law prerequisites necessary to qualify for exemption under Section 200/15-35. Therefore, the Departmental determinations which denied it exemption from 1994 and 1995 real estate taxes should be affirmed.

WHEREFORE, for all the aforestated reasons, it is my recommendation that the portion in dispute, consisting of approximately 5,000 square feet of the first floor of real estate identified by Cook County Parcel Index Number 17-08-205-015-1001 and approximately 1,000 square feet of the basement thereof, not be exempt from 1994 and 1995 real estate taxes.

June 30, 1998  
Date

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Alan I. Marcus  
Administrative Law Judge